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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

JAN - 4 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Cable Television)
Consumer Protection and Competition)
Act of 1992)
)
Broadcast Signal Carriage Issues)

MM Docket No. 92-259

To: The Commission

COMMENTS OF
ALPHA-OMEGA BROADCASTING OF ALBUQUERQUE, INC.

Alpha-Omega Broadcasting of Albuquerque, Inc. (A-Ω), licensee of Noncommercial Educational Television Station KAZQ, Albuquerque, New Mexico herewith offers its Comments in this proceeding with respect to implementation -- **particularly eligibility** -- of the Must-Carry provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992," "1992 Act" or "1992 Cable Act"), *i.e.*, "Section 5, Carriage of Noncommercial Stations" as it appears at 106 Stat. 1477-81. A-Ω is an independent public television station licensee, beset, heretofore, by grave disappointments and frustrations in its efforts to secure carriage on the Albuquerque area cable television systems in order to meet the educational and other

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intellectual needs of its service communities.¹ A-Ω's concern is that the Commission, in this implementing rulemaking proceeding, adhere strictly to the statutory command of the 1992 Cable Act as it relates to the definition of "Qualified Noncommercial Education Television Station." Sec. 615(l)(1) of the Communications Act of 1934, as amended, 47 U.S.C § 615 (l)(1); 106 Stat. 1460, 1481.

Essentially, KAZQ has been foreclosed from serving a large segment of its potential constituency by having been frozen out of carriage on the cable television systems serving Albuquerque, NM and its environs. Two large, Multiple Systems Operators, and two small cable systems operate in KAZQ's service area. The advent of the 1992 Cable Act has meant carriage on one of the MSOs and on neither of the small systems.² It goes without saying that exclusion from a cable system is exclusion from all of that system's subscribers as potential members of the KAZQ audience and, therefore, as potential supporters. Without this financial support, A-Ω has been hampered in its efforts to provide optimum service.

KAZQ is entitled to mandatory carriage in the Albuquerque, New Mexico market and such carriage was to have commenced on or before December 4, 1992, but for a Standstill Agreement reached in the civil actions challenging the constitutionality of the must-carry provisions. Certain provisions of the 1992 Cable Act are self-effectuating,

¹ A-Ω may be said to signify A to Z, First to Last and Soup to Nuts, among others. While A-Ω does not pretend to be all things to all people, as will be seen it does offer noncommercial educational programming diversity.

² Appropriate Complaints will be filed in the near future.

sixty days after override, including that of carriage of qualified local noncommercial stations,³ and will continue to be self-effectuating upon dissolution of the Standstill Agreement,⁴ assuming that occurs.

KAZQ is licensed by the Federal Communications Commission (hereinafter "Commission" or "FCC") to operate on Channel 32 at Albuquerque, New Mexico. Channel 32 and Channel 5 are the only two television channels in the FCC's Table of Allotments that are reserved for non-commercial, educational use in Albuquerque.⁵ Channel 5 is occupied by KNME-TV, licensed to the Regents of the University of New Mexico and Board of Education, Albuquerque.⁶ KAZQ is licensed to A-Ω, a non-profit, non-stock corporation organized for the purpose of owning and operating one or more public broadcast stations, and, in general, to do all things necessary or appropriate ancillary thereto. It has qualified as tax-exempt under Section 501(c)(3) of the Internal Revenue Code.⁷

³ Federal Communications Commission, *Self-Effectuating Provisions of the Cable Television Consumer Protection and Competition Act of 1992*, 3 FCC Rcd 7307 (1992).

⁴ Which is, for all intents and purposes, a Stipulation entered into by the parties and approved by the United States District Court for the District of Columbia in lieu of prosecuting a request for a temporary restraining order.

⁵ 47 C.F.R. § 73.606(b).

⁶ Reed Publishing (USA) Inc., *Broadcasting & Cable Market Place*, B-42 (1992).

⁷ A-Ω's "exempt status under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) is still in effect." Letter from Gary O. Booth, District Director, Internal Revenue Service to Alpha Omega Broadcasting of Albuquerque, Inc. (June 13, 1989).

A-Ω's authorization to operate KAZQ is pursuant to Section 73.621 of the Rules of the Commission⁸ which provides, in pertinent part: "(a) ... noncommercial educational broadcast stations will be licensed only to nonprofit educational organizations upon a showing that the proposed stations will be used primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service." A-Ω made such a showing in connection with its application for construction permit to the FCC. File No. BPET-850212KH. Said construction permit was, of course, followed by KAZQ's license. File No. BLET-871019KH.

A-Ω's concern in this rulemaking docket is with Paragraph 7 of the Notice of Proposed Rule Making.⁹ There in describing eligibility the Commission is accurate as far as it goes, but does not go as far as does the 1992 Act. Presumably, there was no intent to short-circuit the Act's full definition in the implementing process. Nonetheless, it is critical that any error of omission, inadvertent as it undoubtedly was, not provide a vehicle to be ridden in the future by recalcitrant cable systems when evaluating (or arguing) cable carriage demands. Thus, the NPRM refers to NCE eligibility in the context of a "licensee eligible to receive a community service grant from the Corporation for Public Broadcasting" (sometimes "CPB") whereas the 1992 Cable Act speaks in terms of a "'qualified noncommercial educational television station' [as] mean[ing] any

⁸ 47 C.F.R. § 73.621.

⁹ FCC 92-499, released November 19, 1992.

television broadcast station which ... (ii) has as its licensee an entity which is eligible to receive a community service grant ... from the Corporation for Public Broadcasting ... **on the basis of the formula set forth in section 396(k)(6)(B)** [of the Communications Act]" (emphasis supplied).

The 1992 Cable Act amended the Communications Act of 1934, 47 U.S.C. § 531 *et seq.*, by, among other things, adding a new Section 615. It reads, in pertinent part:

"SEC. 615. CARRIAGE OF NONCOMMERCIAL EDUCATIONAL TELEVISION

"(a) CARRIAGE OBLIGATIONS.-- ... each cable operator of a cable system shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.

*** * ***

"(l) DEFINITIONS.-- For purposes of this section--

"(1) QUALIFIED NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.--The term 'qualified noncommercial educational television station' means any television broadcast station which--

"(A)(i) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; and

"(ii) has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B); or

"(B) is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes.

"Such term includes ... (II) a full-service station or translator if such station or translator is licensed to a channel reserved for noncommercial educational use pursuant to section 73.606 of title 47, Code of Federal Regulations"

The formula referenced above as being "set forth in section 396(k)(6)(B)" of the Communications Act and which appears therein, and is the only formula to so appear, is "set forth" in the following context:

"... on the basis of a formula designed to--
 (i) provide for the financial needs and requirements of stations in relation to the communities and audiences such stations undertake to serve;
 (ii) maintain existing, and stimulate new, sources of non-Federal financial support for stations by providing incentives for increases in such support; and
 (iii) assure that each eligible licensee and permittee of a public radio station receives a basic grant."

It is important that the Congressional formula not be forgotten. It is a time-honored principle of statutory construction that laws are to be interpreted as Congress wrote them.¹⁰ KAZQ airs only noncommercial programming and focuses its educational offerings with programs produced by other nonprofit corporations, programs produced by Kentucky Educational Television, deaf instructional programs and locally produced informational and educational programming important to viewers in Central New Mexico. It carries five hours of children's programming per week, including classic movies and vintage sitcoms. It duplicates no programming from the local PBS affiliate. Were the formula to be ignored, A-Ω, and many like it, could be reduced to being eligible for mandatory cable carriage on the basis of whatever whim CPB might incorporate into whatever eligibility standards it has at any given moment. A-Ω has never applied to CPB for a community service grant -- nevertheless it is eligible therefor. However, A-Ω has

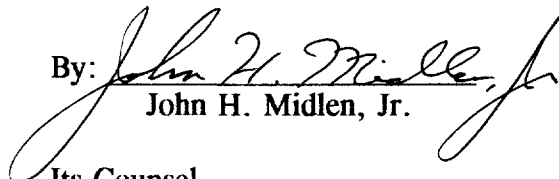
¹⁰ D. Savage, *Turning Right, The Making of the Rehnquist Supreme Court*, 106-07 (1992).

no present intention of so applying, and its carriage eligibility must, obviously, not be dependent upon the personages at CPB.

Given the foregoing, Station KAZQ "has as its licensee an entity which is eligible to receive a community service grant ... on the basis of the formula set forth in section 396(k)(6)(B)" and for that and other reasons is a qualified local noncommercial educational television station entitled to mandatory carriage on cable television systems with 36 or more channels within 50 miles of Albuquerque, provided it requests carriage, which it has done. Eligibility should be so defined.

Respectfully submitted,

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Albuquerque, Inc.

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